

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No.: 3:07-cr-313-MHT
)	
PIERRE MARCELLO GUNNINGS)	

**RESPONSE TO GOVERNMENT’S NOTICE OF INTENT TO USE
RULE 404(b) EVIDENCE**

COMES NOW the Defendant, **PIERRE MARCELLO GUNNINGS**, through
Undersigned Counsel, Donnie W. Bethel, and responds to the Government’s Notice that it
intends to offer certain evidence at trial, pursuant to Federal Rule of Evidence (FRE) 404(b).

1. Mr. Gunnings agrees with the facts as set forth in paragraphs one and two of
the Government’s Notice. Mr. Gunnings would further note that the date on which he is
alleged to have knowingly made a false and fictitious statement related to the purchase of a
firearm was December 16, 2006.

2. The Government states that it intends to offer evidence that Mr. Gunnings was
arrested in March 2008 for carrying a pistol without a permit, and that it intends to offer this
evidence for the purpose of proving Mr. Gunnings’ motive or intent and lack of mistake or
accident relative to the charged crime. However, the Government offers no explanation as
to how the proffered evidence that Mr. Gunnings may have carried a pistol without a permit
in March 2008 is at all relevant to, or elucidates in any way, his motive or intent to falsify a
form some 15 months earlier, or how such evidence would negate any possible claim of

accident or mistake that may have impacted how Mr. Gunnings filled out the form in question.

3. As the Government is the proponent of this evidence, it bears the burden of persuasion in moving for the admission of the evidence. It is wholly insufficient for the Government merely to state that it intends to offer evidence under FRE 404(b)—it must actually persuade this Court *how* the proffered evidence would prove Mr. Gunnings' motive, intent or lack of mistake or accident. The Government has offered no such explanation in its Notice.

3. Therefore, the Government should be precluded from offering at trial any evidence concerning Mr. Gunnings' March 2008 arrest for carrying a pistol without a permit.

Dated this 8th day of May, 2008.

Respectfully submitted,

s/ Donnie W. Bethel
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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Kent B. Brunson, Assistant U. S. Attorney.

Respectfully submitted,

s/ Donnie W. Bethel
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